

SERVICE DATE – NOVEMBER 13, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35247

GRENADA RAILWAY, LLC—ACQUISITION AND OPERATION EXEMPTION—
ILLINOIS CENTRAL RAILROAD COMPANY AND WATERLOO RAILWAY COMPANY

Decided: November 12, 2013

On September 11, 2012, Robert J. Riley filed a petition to revoke an exemption received by Grenada Railway, LLC (GRYR) to acquire and operate a rail line approximately 175.4 miles long between milepost 403.0, at Southaven, Miss., and milepost 703.8, near Canton, Miss. (the Line). By decision served on September 10, 2013 (September 10 Decision), the Board denied Riley's petition, established a new subdocket and announced a public meeting to examine the lawfulness of an embargo GRYR imposed over a portion of the Line, and requested information from GRYR related to that embargo.

On September 26, 2013, Riley submitted a request for an unspecified extension of the deadline for filing a petition for reconsideration, which would otherwise have been due by September 30, 2013. See 49 C.F.R. § 1115.3(e). On the same day, Riley also submitted a motion to compel discovery from GRYR. Riley asks the Board to compel GRYR to answer interrogatories and requests for documents included with Riley's motion to compel, discovery that Riley states he intends to use to support reconsideration of the September 10 Decision denying his petition to revoke. On September 30, 2013, GRYR submitted replies in opposition to Riley's motion to compel and request for extension of time. On October 17, 2013, new counsel for Riley submitted a letter entering his appearance and stating that he intends to file a petition for reconsideration on Riley's behalf within 20 days of the service date of a Board decision that rules on Riley's motion to compel. In addition, counsel for Riley amends two of the discovery requests subject to Riley's motion to compel. On October 18, 2013, GRYR submitted a letter opposing Riley's requests.

Riley's motion to compel will be denied. Pursuant to 49 C.F.R. § 1121.2, a party seeking discovery in connection with a petition to revoke an exemption must indicate in the petition whether it is seeking discovery, and if it is, the party must file its discovery requests at the same time it files its petition to revoke. Discovery must be completed 30 days after the petition to revoke is filed. Id. Here, all of the information Riley is now seeking in these discovery requests existed and could have been sought at the beginning of the proceeding. Riley, however, filed his petition to revoke GRYR's exemption on September 11, 2012, with no discovery requests attached and with no indication that he sought discovery. Instead, Riley did not file his discovery requests, together with the motion to compel, until September 26, 2013, after the Board's decision on the merits. Thus, Riley's discovery requests are late by more than a year.

Moreover, the Board has already denied Riley's petition to revoke in its September 10 Decision. Allowing discovery after the merits of Riley's petition to revoke have been decided would undermine the strong public interest in administrative finality. See, e.g., Fla. Inst. of Tech. v. FCC, 952 F.2d 549, 554 (D.C. Cir. 1992) (public has an interest in administrative finality).

The request for extension of time to seek reconsideration will be granted in part. Due to the unusual issues of timing involved here, including the recent federal government shutdown, a short extension is appropriate for Riley to file a petition for reconsideration. An extension of 20 days is unnecessary, however, as nearly two months have passed since the Board issued its September 10 Decision. Therefore, petitions for reconsideration of the September 10 Decision will be due by November 22, 2013. To succeed on a petition for reconsideration, a party must show one or more of the following points: (1) that the prior action will be affected materially because of new evidence or changed circumstances; (2) that the prior action involves material error. 49 C.F.R. § 1115.3. The petition must state in detail the nature of and reasons for the relief requested. Id. If the petitioning party seeks an opportunity to introduce evidence, the evidence must be stated briefly and must not appear to be cumulative, and an explanation must be given why it was not previously offered. Id.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Riley's motion to compel discovery is denied.
2. Riley's request for extension of time is granted in part.
3. Petitions for reconsideration of the Board's September 10 Decision are due by November 22, 2013.
4. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.